

The challenge of enlargement - Commission opinion on Austria's application for membership (31 July 1991)

Part One

General

Relations to date between the Community and Austria

Austria's decision in July 1989 to apply for accession to the European Community is the climax of a series of steps taken by Austria during the last 30 years aimed at giving tangible form to its ties with the Community. Austria demonstrated its desire to be actively involved in European integration from the outset. The decision it took in 1961 aimed at establishing a relationship of association with the Community was preceded by a number of steps which were decisive for its future.

Even before 1955, the year in which it regained its sovereignty, Austria had subscribed to the concept of European cooperation; it decided to participate in the Marshall Plan and thus became a founding member of the OEEC. In 1956 Austria joined the Council of Europe.

Following the entry into force of the Treaties of Rome and the failure of the attempts to create a large free trade area in 1958, Austria, together with six other European countries that were members of the OEEC formed the European Free Trade Association in 1960.

The first steps taken by certain EFTA countries towards applying for accession to the Community in 1961 led the EFTA neutral countries also to seek close ties with the Community, but in the form of an association. Only Austria persevered in this endeavour and it made a further request in 1963. On account of the scale of the economic relations that existed at that time with the Community countries, negotiations began in 1965 and continued until 1967. Those negotiations were unsuccessful both for reasons bound up with the application itself (notably institutional questions) and for reasons relating to the general political situation at the time.

The prospect of Community enlargement, on the one hand, and Austria's need, on the other hand, to retain access to its traditional markets led, from 1969 onwards, to talks on the conclusion of an agreement *sui generis* (based on Article 113, not, as previously, on Article 238 of the EEC Treaty). The agreement *sui generis* was replaced by the general free trade agreement which was negotiated with Austria concurrently with those with the other EFTA countries and which came into force on 1 January 1973.

By virtue of this interim agreement with the Community, which came into force three months before the general free trade agreement, Austria alone qualified during a brief period (15 months) for a greater initial tariff reduction than the other EFTA partners. Free trade in industrial products between the Community and Austria was established in July 1971.

While its ties with the Community up to the mid 1980s were determined mainly by economic and, in particular, commercial considerations, it was the dimension of the Twelve's single market and the prospect of political union which were perceived in Austria as a new challenge and which provoked discussion of its own future in Europe. From 1986 onwards there was an

evident political shift in Austria as a necessary response to the changed situation in Europe. Austrian foreign policy was accordingly directed both towards continuing the policy of neutrality and neighbourliness towards East and West with particular emphasis on a more active approach to the Community. Austria wished to become an integral part of the future single market.

In 1987 this new attitude towards the Community found expression in an 'overall approach' by Austria; it aimed at full participation in the Twelve's internal market while still not seeking accession. Since the overall approach did not secure the anticipated results, the Austrian Government opted in 1988 for outright accession and submitted its application for full membership in July 1989, subject, however, to the express requirement of respect for its neutrality.

This process was accompanied by a gradual strengthening, on a pragmatic basis, of ties between the Community and the EFTA countries as a whole, going beyond the provisions of the free trade agreements, notably via the Luxembourg Declaration of April 1984. The pragmatic case-by-case approach of the 'Luxembourg process' enabled EC-EFTA cooperation to be strengthened in a considerable number of areas.

The White Paper objective of completing the internal market in 1992 and the fears of the EFTA countries - the Community's main trading partners - that their trade and industry would be adversely affected, finally led the two parties to seek together a new, more comprehensive and more structured form of relationship. It was intended that the European Economic Area should enable the four freedoms (in respect of goods, services, capital and persons) to be achieved and allow greater involvement in the Community horizontal and back up policies.

The history of relations between Austria and the Community over the past 30 years shows that the Austrian Government has often taken initiatives regarding its ties with the Community which, although they have not always been successful, have nevertheless shown the way forward, with significant implications for other countries as well.

In deciding to move definitively towards integration with the Twelve, Austria has indicated its desire to share its destiny with a Community which is today more integrated economically and whose political structures are changing. It made this move at a time when it was not possible to foresee the total collapse of the regimes in Eastern Europe. Its application for accession is now set in a context that has undergone profound change, both in Europe and worldwide.

The Austrian economy and the Community

Although its economy is medium sized, as a Member State Austria would form part of the group of member countries that are the most stable and the strongest economically in the Community². In view of the degree of convergence of its economy with that of the Community, Austria will be able to participate fully in the major Community projects, establishment of the internal market and EMU and strengthening economic and social cohesion without fundamentally changing the economic policies pursued up to now.

I. The Austrian economy is prosperous and dynamic and the main macroeconomic equilibria are under control. The figures for inflation have, for a considerable time, been close to the best achieved in the Community and they continue to be favourable. On average, during the

period from 1986 to 1990 private consumer prices scarcely increased by more than 2 % per annum, a rate lower than that achieved on average by the countries participating in the exchange rate mechanism of the EMS from the outset. Although there was something of an upsurge in inflation in 1990 as a result of strains on production capacity, upward pressure on wages and a short-lived increase in the price of oil, during the next two years the rise in the rate of unemployment should moderate wage increases and the inflation rate should remain close to 3%, a level compatible with continued stabilization of the schilling exchange rate. The general government deficit is moderate, public debt as a percentage of GDP has been stabilized at a level lower than the Community average and the current external account is almost in balance.

2. Furthermore, a broad social consensus and a cooperative approach as far incomes policy is concerned have made it possible, during recent years, to reconcile the objective of stability with very favourable results as regards growth and employment. The mean standard of living of the Austrian population is higher than the Community average and the unemployment rate has been relatively low for some considerable time. As far as growth is concerned, the moderate recovery during the first half of the 1980s during which GDP increased by 2% per annum on average, led to a period of exceptionally dynamic expansion.

Between 1986 and 1990 growth in GDP was 3%, with rates equal to or higher than 4% in 1989 and 1990. In the first place, the Austrian economy benefited from a significant upsurge in exports to the Community, notably to Germany. However, the very favourable trend of basic domestic factors in particular the controlling of inflation, the lowering of real unit wage costs and the reduction of the general government deficit have made a major contribution to the appreciable increase in investment.

A sharp upsurge in employment has accompanied the recovery in growth. However, on account of the influx of foreign workers mainly from countries in south-eastern Europe, it has not been possible to reverse the upward trend of the unemployment rate. On the basis of the national definition used (registered unemployed), it rose from 2% in 1987 to more than 5% in 1990, a level still well below the Community average, whereas a considerable and increasing share of the jobs created (76% in 1990) went to foreign workers.

3. The well balanced mix of macroeconomic policies has made a major contribution to the creditable results achieved by the Austrian economy. From the standpoint of monetary policy, anchoring the schilling to the German mark has created the framework needed to stabilize expectations and has had a powerful impact on the other areas of economic policy. The long term interest rate differential against the German mark, a good indicator of the risk premium, has hardly ever exceeded one percentage point and during recent months it even disappeared. In addition, the stability of the exchange rate relationship with the German mark (and indirectly with the currencies of the other EMS countries) has made it possible to secure long term stabilization of the effective schilling exchange rate, notably in relation to the EMS countries.

During the last four years, budget policy has greatly helped to maintain the main macroeconomic equilibria and the credibility of the exchange rate objective. Firstly, efforts to strengthen the budget focused on reducing the public deficit and controlling public expenditure. The share of the latter in GDP has decreased since 1987 although it remains above the Community average. They also focused on reducing and simplifying the direct taxation of individuals and firms. These efforts must, however, continue, especially in regard

to expenditure. In the first place, the trend of economic activity is likely to become less favourable as and when the effects of German unification on Austrian exports become less marked. This will constrain the rate of increase of tax revenue and could result in an 'automatic' increase in social transfer payments. Secondly, the existing pressure for a reduction in VAT rates which are higher in Austria than those generally applied in the Community countries would increase following accession. Further tight control of expenditure should make it possible to reconcile the objectives of controlling public debt and reducing the total tax burden, which is relatively high in Austria.

4. In Austria incomes policy is an essential component in the mix of economic policies. The independence of the two sides of industry is, in principle, inviolate. However, the forum, for which there is provision in Austrian legislation, and within which the representatives of government, employers and employees discuss in practice the underlying guidelines of economic policy as a whole, provides a crucial input to wage negotiations and makes a major contribution to the social consensus, which is particularly marked in Austria. In addition, collective negotiations which generally apply to all the firms in a particular sector can be opened only with the consent of the Joint Committee on Prices and Wages. Although the committee is not directly involved in the negotiations its decisions clearly influence their content.

The persistence of a relatively high level of unemployment by Austrian standards continues to pose a challenge for incomes policy. The arrival on the labour market of less well integrated workers, the upsurge in illegal ('black') employment and the replacement of Austrian workers by immigrant labour has already led the Austrian authorities to take administrative measures limiting the employment of foreign workers. However, the concomitance of rapid job creation, a high level of immigration and the upsurge in the unemployment rate suggest that it will continue to be necessary to review the policies that affect the equilibrium of the employment market, both in regard to wages, occupational adaptability and vocational training.

5. Lastly, as far as structural policies are concerned, efforts must continue to be directed at securing a more competitive environment and increased productivity. Certain dysfunctions bound up with structural rigidities are liable, in the long run, to put at risk the undeniable macroeconomic successes of the Austrian economy. It displays definite tendencies towards corporatism, stemming from the influence of numerous and varied interest groups that are covered by specific rules and regulations conceded in their favour over the years. For the most part these rules and regulations restrict the pursuit of certain activities and competitive access to the market, notably in the services sector.

The productivity of the sectors protected in this way (notably transport, telecommunications, banking and insurance) is relatively low. There are also rigidities in the commercial sector. These are reflected in particular in the prices of consumer and also capital goods, which are higher than those in neighbouring comparable countries.

These dysfunctions, taken as a whole, represent a loss of prosperity for the whole of the Austrian population, even if certain sectors benefit from an economic rent. They also threaten the competitiveness of the sectors that are exposed to foreign competition. In these circumstances, Austria's accession to the Community ought not only to give further impetus to the structural reforms that have already begun but should further ensure their success.

6. Austria's external trade focuses mainly on Europe, reflecting the geographical and historical ties with its close neighbours. From the trade standpoint, therefore, Austria has, in fact, been integrated in the Community for some considerable time. Austria's trading links with the Community, particularly with certain member countries have always been very close, to a degree easily outstripping that achieved in the intra-Community trade of most Member States with one another. As a main trading partner, the Community supplies 68% of Austria's total imports and 65% of Austria's total exports go to the Community. In trade between the Community countries and Austria, Germany has traditionally occupied first place, followed by Italy.

On account of the size of its economy, Austria is clearly a trading partner of relatively minor importance for the Community, accounting for 4.5% of Community imports and 6.5% of its exports. Nevertheless, Austria figures among its main trading partners; in recent years (1986-90) Austria has occupied fifth place as a Community supplier (after the United States, Japan, Switzerland and Sweden) and has been in third place as an export market (after the United States and Switzerland and before Sweden and Japan).

In recent years the traditional trade surplus in favour of the Community has reached ECU 6 billion. This balance represents Austria's largest deficit, four times greater than that vis-à-vis Japan.

There are many similarities in the structure of trade between the Community and Austria, the bulk of trade being in manufactures.

The Community supplies almost three quarters of Austria's imports of manufactures and over half its imports of agricultural products. Although it is somewhat less orientated towards the Community, 65% of Austria exports of manufactures go there and more than 60% of its exports of agricultural products.

Trade in manufactures between the Community and Austria mainly involves transport equipment, machinery, iron and steel products, chemicals, textiles and clothing. Furthermore, 77% of Austria's motor vehicle imports come from the Community, while 70% of Austria's exports of 'paper and the like' products go to the Community.

As far as Austria's other main trading partners are concerned, it is significant that its trade with the Central and East European countries is of the same order of magnitude as its trade with its EFTA partners as a whole. Austria sends more than 10% of its exports to and gets 7% of its imports from EFTA, Switzerland and Sweden being the major trading partners.

By comparison with other industrialized countries, the countries of Central and Eastern Europe (including the USSR and Yugoslavia) account for a relatively large proportion of Austria's trade. In 1990 those countries accounted for more than 10% of Austria's exports and nearly 7% of its imports; its main trading partners are the USSR, followed by Hungary, the CSFR, Yugoslavia and Poland³. By way of comparison, the countries of Central and Eastern Europe account, on average, for 8% of Community exports and imports. The main recipients outside Europe of Austria's exports are the USA (3.2%) and Japan (1.6%), which account for 3.6 % and 4.5%, respectively, of Austria's imports.

The single market and the European Economic Area

The Community's commitment to the completion, by 1 January 1993, of the single market has, from its inception, had a decisive impact on EC-EFTA relations. Already in April 1984, in their Luxembourg Declaration, EC and EFTA Ministers had declared their desire to deepen and extend cooperation within the framework of, and beyond, the free trade agreements, recognizing the particular relevance of the Community efforts to strengthen its internal market.

It gradually became clear, however, to both sides that a more structured relationship was necessary in order sufficiently to consolidate and strengthen cooperation at the same time as the Community progresses towards the completion of the internal market.

Thus it was that, in parallel with her application to join the Community, Austria has also actively taken part, alongside her EFTA partners, in negotiations with the Community for the establishment of a European Economic Area. Under this Agreement which is intended to enter into force on 1 January 1993, virtually the whole of the Community's internal market legislation will in substance be applied by the EFTA countries (in some cases after a transitional period, normally not exceeding two years). Austria will thus already be committed from that time to apply a large part of the *acquis communautaire* which she would ultimately have to take over as a new Member State. This applies in particular to legislation relating to the free movement of goods, services capital and persons, as well as to areas such as social policy, the environment, company law, consumer protection and competition rules.

The remaining areas of Community legislation, which would be the main subject of any accession negotiations, relate principally to agriculture, external relations, institutional and budgetary questions and the question of transalpine road transit. The present opinion consequently concentrates on these latter questions.

Impact of accession

Industry

Given the progressive and substantial integration of the industrial sectors of Austria and the Community which has already taken place, the integration of Austrian industry into the EC internal market should, overall, despite some specific problem areas, take place without creating major structural problems; all the more so if the macroeconomic environment continues to be positive.

The existence of a free trade agreement since 1973 means that Austrian and EC industries already have a long experience of competition and collaboration. The convergence of industrial structures has been further accelerated by two new factors: restructuring and privatization. This process will be further stimulated by the entry into force on 1 January 1993 of the EEA Agreement.

A period of intense restructuring took place in the mid-1980s, and is still under way, particularly in basic industries like iron and steel, paper, non ferrous metals and basic chemicals, which brought about a strong increase in productivity and financial performance (helped by a favourable macroeconomic environment which facilitated structural adjustment). This process is highlighted by a look at production and employment figures and, more dynamically, at investment trends. In the second half of the 1980s investment grew at a higher

rate than GDP to reach 24% of GDP in 1990 and was concentrated in troubled industries (for rationalization). Only recently investment tends to shift from restructuring to increase in capacity.

Public sector involvement was a key element in Austrian industrial policy in the past, not only via nationalized industry and controlled banks but also via State aids and regulations. A noticeable shift in this policy can be observed at present with a reduction of State aids, privatization, emphasis on horizontal measures to improve competitiveness and deregulation. A partial privatization and comprehensive restructuring of the holding OIAG⁴ is progressing rapidly and has already led to an operating surplus in 1989 after several years in the red. Privatization is also under way in two of the principal Austrian banks: Creditanstalt-Bankverein and Österreichische Länderbank AG. Nevertheless, Austria continues to be one of the most regulated OECD economies via institutional factors (notably the 'Gewerbeordnung' and the system of chambers) and de facto behaviour of market agents which tend to make entry and operations difficult in certain sectors.

A preliminary analysis of the Austrians' own assessment of their existing legislation and its compatibility with the *acquis communautaire* in the internal market context indicate that Austria is ready and willing to have integrated most of the relevant *acquis* by 1 January 1993 in accordance with the likely obligations in the EEA context. The possible exceptions to this general rule will be very few, and mainly in the automobile sector and will give rise to a need, in some cases, for transitional periods.

Despite the high level of integration between most industrial sectors of Austria and the EC, some problems nevertheless still exist (for example, concerning State aids for steel and cars, delays in the restructuring of the steel industry, capacity increases in sectors already suffering from overcapacity in the EC), but which should be progressively eliminated in case of accession.

Agriculture and forestry

The socio-economic situation of Austria agriculture has many similarities to that of the EC. Austria took a decision at the beginning of the 1960s explicitly to gear its agricultural policy to that of the Community. Consequently, Austria's adaptation to the Community's common agricultural policy should not pose any fundamental difficulties.

Nevertheless, following certain new developments in Austrian agricultural policy during the 1980s, there are some important differences compared with the CAP, in particular a higher degree of protection for domestic production by means of market and price policy and a relatively greater financial support for social, regional, ecological and other similar agricultural functions (the so called 'eco-social agricultural policy' launched in 1987).

Despite the similarity of basic principles, the current Austrian systems of price support and market regulation are not in conformity with the CAP and adaptation of Austrian policy is necessary. In particular, the high level of production support now in operation in Austria will need to be reduced - in the shortest possible period - to the EC level.

Austrian agriculture will thus have to bear price decreases although, at the same time decreases for input costs can be expected either because taxes will be changed or because European competition will push prices lower. It should be remembered moreover, that

decreases of sectoral GDP do not necessarily imply a similar decrease in farmers' personal incomes. As regards production levels, Austrian estimates suggest that there will be a decrease in production of cereals, pigmeat and poultry, but an increase in beef production.

However, for the time being any detailed assessment on possible needs for adaptation or possible consequences of accession in the field of agriculture is greatly complicated by the fact that the EC itself intends to change its agricultural policy in a way which will affect not only the major markets but also structural environmental and forestry instruments. On 9 July 1991 the Commission adopted a communication to the Council and the European Parliament on this subject (COM(91) 258 final). The revision of the EC policy along the lines of the Commission proposal could lead to a different appreciation of the necessary changes in Austria agricultural policy.

As regards external trade aspects, the Austrian systems of border protection and support for exports depend in general also on the level of internal support, but are at the same time more determined by internal needs or surpluses. As a general rule, adaptation should not cause major problems. Since the EC is Austria's biggest trading partner, accession should provide additional economic benefits to both Austria and the EC.

Austria has a high standard of veterinary and plant health legislation although this is partly different from that of the EC. A rapid adaptation of Austrian legislation to Community rules is desirable. This should not however, create major difficulties, as this will in any case partly be achieved by virtue of the EEA Agreement.

As regards structural, social and environmental policy, in principle, most of the numerous Austrian measures in this area also exist in the EC. In these cases only minor modifications will be necessary.

As to the effects of Austrian accession on EC markets, no substantial difficulties for particular markets are to be expected, given the small volume of Austrian production compared to that of the EC, even if the Austrian degree of self sufficiency for particular products were still to be above 100% after the adaptation of production to the EC price level.

However, there is a possibility that present regional trade flows between parts of the Community directly bordering on Austria could be affected. This would possibly result in the need for regional adaptation.

Transport

Transport is a crucial economic and political issue for both the Community and Austria.

Owing to its geographical position between Community Member States and to the restrictive policy applied by Switzerland, Austria has become the premier country of transit for the Community. (The volume of goods transiting Austria between one Community country and another is the heaviest, amounting in 1988 to 17 666 451 tonnes, with goods in transit between a Community country and a non-Community one and between non Community countries accounting for 4 937 551 and 244 878 tonnes respectively.

As a rule, the Austrian authorities have always endeavoured to play the kind of role that befits Austria as a transit country at the heart of Europe, as evidenced by the construction of the first

transalpine motorway (the Inntal-Brenner, completed in 1972), the development of the country's railway infrastructure and subsidized rail carriage rates in combined road rail transport. The enormous growth in road transit, up fourfold in 15 years, coupled with mounting resistance from communities living alongside the motorways carrying transit traffic, particularly the Brenner, has prompted the Austrian Government to adopt a very restrictive policy on road transit. Moreover, it has espoused a number of unilateral measures and practices, such as the refusal to increase existing road transit quotas, plans to extend the measures in question to countries thus far unaffected (Belgium and Denmark), higher tolls on transit roads and a partial ban on night-time driving.

Austria applies dirigiste measures to transit across its territory in an effort to curtail free choice of transport mode. The country policy on Community transit traffic by road has three objectives:

- (i) to re divert to Switzerland traffic that has been passing through Austria as a result of the former country's restrictive measures;
- (ii) to have greater recourse to combined transport (moving traffic off the road on to rail in order to protect the environment);
- (iii) to bring the remaining road transit traffic into line with the requirements of environmental protection and conservation.

In the transport negotiations conducted by the Commission on the strength of the negotiating directives given by the Council in December 1987 and December 1988 with a view to putting in place transit arrangements compatible with the internal market, and in the negotiations on the EEA, Austria has refused until now to accept the *acquis communautaire* in the following areas: elimination of quantitative restrictions in road traffic, vehicle weights and dimensions and abolition of frontier checks and formalities. Inside the Community the concept of transit traffic will be devoid of meaning once the internal market is in place. In common with any other kind of international road traffic, transit traffic will be free of any quantitative restriction after 1992. Technical and environmental standards have already been harmonized at Community level.

So as a member of the Community Austria would have to drop its restrictive policy against intra Community road transit and apply the *acquis communautaire*.

Even if an agreement (on the level of pollution permitted by the Austrian Government) were to be concluded at the end of the aforementioned negotiations it would be incompatible with the *acquis communautaire* and could only be provisional.

In the transport sector Austrian membership is likely, by and large, to raise thornier problems for the Community than previous accessions and transit traffic between Community Member States across Austria will probably be one of the core issues of the accession negotiations.

External relations

As a member of the Community, Austria would be bound by the Common Customs Tariff (see below under 'Customs union') and by the Community's common commercial policy towards third countries, as well as by the agreements which the Community has concluded with third countries.

The introduction of the common commercial policy would mean the application to Austria's external trade of the relevant basic provisions of the Treaty of Rome (and notably those of Article 113 (EEC)) as well as of the Community acquis in this field, and in particular:

- (i) the common import regime (including the special arrangements applicable to State trading countries and China);⁵
- (ii) the rules concerning dumping or subsidization by countries not members of the Community;⁶
- (iii) the common export regime;⁷
- (iv) the so called new commercial policy instrument;⁸
- (v) the rules concerning the prevention of imports of counterfeit goods.⁹
- (vi) the Community's generalized system of preferences towards developing countries.

Any trade policy instruments or measures currently applied by Austria would have to be modified or repealed so as to bring Austrian law into conformity with her obligations under the above acquis. Given Austria's current liberal trade policy for industrial products, none of these is likely to give rise to any major difficulties.

Principal among the agreements which Austria would have to take over are the various Community agreements with the (remaining) members of EFTA, the Europe Agreements with the countries of Central and Eastern Europe, the various Mediterranean Agreements and the Lomé Convention. None of these should give rise to any substantial difficulty for any of the parties involved. In certain cases, the Community itself might need to renegotiate its existing agreements with certain partners to take account of Austria's accession, to the extent that technical adaptations or transitional periods were called for (e.g. the EEA Agreement, bilateral textile agreements and certain preferential agreements with third countries).

As regards the Community's bilateral textile agreements under the MFA, accession would lead at first glance to a higher level of restriction for textile products exported to Austria from third countries, owing to the wider geographical and product coverage of the Community's current bilateral agreements under the Multifibre Arrangement. It is, however, possible that, given the time framework involved, both the EC and Austria could already be implementing the results of the Uruguay Round. Moreover, accession would lead to a reduction in Austria's current high level of tariff protection for the textiles sector, by virtue of Austria's introduction of the Common Customs Tariff. The overall level of protection involved in the event of Austrian accession might thus well be less than would appear at first sight and it should diminish as part of the integration process. Any increase in protection which did occur might need to be compensated by increases in quotas to reflect traditional trade flows between Austria and the countries in question.

As for relations with the ACP countries, Austrian accession also entails joining the Lomé Convention, and of course it would also have to pay into the Community's budget for development policy (Title 9 of the budget).

For Austria to become a contracting party to the Lomé Convention a protocol of accession will need to be concluded. Pursuant to Article 358 of Lomé IV the Community must inform the ACP States as soon as it has decided to enter into negotiations leading to the accession of a third country. Regular contacts then have to take place between the Community and the ACP States while the accession negotiations are in progress. Once they have been concluded

the Community and the ACP States have to engage in negotiations to establish a protocol of accession and adopt any measures of adaptation and/or transition that may become necessary.

As regards those agreements and arrangements currently in force between Austria and third countries outside the Community, the information available from the Austrian authorities suggests that there are none outside the agricultural sector imposing permanent obligations on Austria. A number of them, however, would have to be adapted or denounced to conform to Austria's obligations as a Member State of the EC, e.g. the current arrangement whereby the Austrian customs duty on Japanese cars is unilaterally reduced by 50% where the producer purchases a certain level of Austrian components. Austria's various agreements with the countries of Central and Eastern Europe would have to be checked for any clauses which were in conflict with Community law. The same would apply in the field of agriculture, where Austria has concluded several agreements with third countries in order to promote trade in certain products, such as cheese, yoghurt, beef and grains.

Austria would have to cease to be a member of EFTA, her relations with these countries being governed henceforth by the EC's own agreements with the EFTA countries.

Austria's neutrality

In his letter of 14 July 1989 to Mr Dumas, President of the Council, Mr Mock said that in lodging its application to join the Community Austria was doing so on the understanding that it would maintain its internationally recognized status of permanent neutrality based on the Federal and Constitutional Law of 26 October 1955. This is a specific problem that no other prospective member of the Community has posed hitherto. It must therefore be examined with reference to the existing Treaties and in the light of what will emerge from the two intergovernmental conferences currently charged with revising them. Political deliberations on this matter will also have to take account, however, of the changes in the meaning of the very concept of neutrality in the European context, in the wake of the events in Central and Eastern Europe and the USSR since late 1989, and also of current developments in Austria itself in this connection¹⁰.

Background

From the legal point of view Austria's neutrality is based on Austrian law and on international public law.

The legal basis in national law is the Constitutional Law on the neutrality of Austria of 26 October 1955. In international public law the country's perpetual neutrality is based on notification of that law on neutrality to each State with which Austria had diplomatic relations in 1955 or with which it has established such ties since. By tacitly or explicitly accepting notification of that law Austria's partners have recognized its neutrality and are obliged to honour it.

What does the perpetual neutrality of Austria entail? Neutrality is a clear cut notion in time of war: defence of the territory of the neutral State and observance of its integrity by the belligerents. From the economic point of view, neutrality bestows the right to have normal economic relations with the warring parties and other neutral countries provided that no material support is given to war activities or to the belligerents' military output. Furthermore perpetual neutrality obliges Austria to behave even in peacetime in such a way that it will be

able to adhere strictly to its duty of neutrality in wartime: these are the 'anticipatory effects' (in German 'Vorwirkungen') of perpetual neutrality. Two of these effects are explicitly mentioned in the Neutrality Act: a ban on membership of any military alliance and on the presence of foreign military bases on Austrian territory. Apart from that, the anticipatory effects of neutrality, although rooted in law, are more political in nature. Even so they may still pose problems for the Community were they to lead Austria to oppose systematically certain measures which in its view clashed with its policy of neutrality, notably in the framework of a future common foreign and security policy.

Problems posed for the Community by Austria's perpetual neutrality by reference to the existing Treaties

The common commercial policy clearly poses problems for the accession of a neutral Austria to the Community. This is particularly true in the case of the Council's now consistent practice of imposing economic sanctions against certain non-Community countries under Article 113 of the EEC Treaty after a consensus has been reached with political cooperation (e.g. against Argentina, the Soviet Union, South Africa and Iraq). In the event of war such sanctions would be incompatible with the obligations of neutrality, but sanctions imposed by the United Nations seem to be an exception¹¹. In peacetime the imposition of 'political' sanctions might be at odds with Austria's policy of neutrality but no legal obligations would cramp Austria's freedom to determine where it stood on issues under discussion in the Community institutions except for the very general ones in the Neutrality Act.

As regards accession to the ECSC Treaty, Article 59 (serious shortage) could theoretically give rise to a situation where Austria would have to ban the export of coal and/or steel (i.e. strategic exports) bound for non-Community countries as this might in the event of war prove to be incompatible with its permanent neutrality.

Lastly, Chapter VI of the EAEC Treaty exposes Austria to the opposite risk of having to supply to or agree to the supply by the supply agency of source materials or special fissile materials to each Member State, even time of war.

Problems which could arise in the context of the future common foreign and security policy

The conclusions of the European Council held in Luxembourg on 28 and 29 June state, under the heading 'Common foreign and security policy', that there is a 'unanimous desire to reinforce the identity and role of the Union as a political entity on the international scene, as well as the concern to ensure the consistency of all its external activities'.

It was accepted that the draft Treaty submitted to the European Council 'forms the basis for the continuation of negotiations'. This draft provides inter alia that one of the aims of the common foreign and security policy is to strengthen the security of the Union and its Member States in all its aspects, including the eventual establishment of a defence policy.

The question arises, therefore, of whether Austria would be in a position to enter into such obligations, if it also wished, as stated in the application for accession, to maintain its status of permanent neutrality and to continue its policy of neutrality.

Even on the hypothesis that the process of reaching decisions on implementing the common foreign and security policy would rest on a consensus of agreement with regard to decisions

of principle, the present Member States would still require a minimum level of legal certainty with regard to Austria's capacity to join in such a consensus without running into constitutional barriers. Difficulties could be even more likely to arise where implementing decisions were taken by qualified majority. It is worth remembering in this connection that an applicant for accession has to ensure that its internal law including constitutional provisions, is compatible with Community law.

As already noted, Austria's view is that its neutrality constitutes by its very nature a contribution to 'maintaining peace and international security' (as referred to in Article 224), and that in the new world situation it would have no difficulty in contributing to a peace-keeping operation on which a decision had been taken by the UN. Clarification is still needed on the question of whether Austria would also be able to contribute to a peace keeping operation decided upon by the Community (the political union), without the UN's legal endorsement, on the understanding that Austria would be given a degree of leeway with regard to the form of its contribution, provided that it was at one with the other Member States on the decision.

Possible solutions to problems arising in connection with Austria's neutrality

Solutions to the legal difficulties outlined above will have to be sought in the accession negotiations, either through redefinition by Austria of its neutral status (with its partners being notified of such a redefinition), or through the inclusion in the act of accession of a derogation from the EEC Treaty.

Under Article 224 of the EEC Treaty Member States may obtain a general derogation from Treaty rules, in two sets of circumstances that are relevant to the matter under discussion, namely in the event of war or to enable a Member State to carry out obligations it has accepted for the purpose of maintaining peace and international security. Given the strictness of the interpretation which, according to a Court of Justice ruling, is necessary where exceptions under Article 224 are concerned¹², it is not possible to accept the argument put forward by the Austrian authorities to the effect that Austria's neutrality represents a contribution to maintaining peace and international security and that Austria would thereby be able exempt itself from certain Treaty obligations.

On the other hand, it will be necessary to reach agreement in the accession negotiations themselves on an approved interpretation of general exceptions pursuant to Article 224. It would also be necessary to go into the question of whether such an approved interpretation of Article 224 EEC could be applied *mutatis mutandis* to the ECSC and Euratom Treaties. In the event of Article 224 being deleted from the Treaty, as proposed by the Commission at the intergovernmental conference, an approved interpretation on this point would have to be sought by other means.

Developments in the negotiations within the intergovernmental conference on political union would also require the Community to seek specific assurances from the Austrian authorities with regard to their capacity to undertake obligations entailed by the future common foreign and security policy.

It is clear from the foregoing that Austria's permanent neutrality creates problems for both the Community and Austria. Subject to possible further developments in the discussions under way in the intergovernmental conference on political union, affecting the common foreign and

security policy, these problems should not however prove to be legally insurmountable in the context of the accession negotiations.

Conclusions

From both the economic and the political points of view, Austria's application for accession is in a quite different category from those of previous applicants.

From the economic point of view, no previous applicant has started from a position where, by virtue of numerous agreements, it already had completely free trade in industrial products with the Community, or had already committed itself to apply a substantial part of the *acquis communautaire* where its degree of economic integration with the Community was so advanced. There is also Austria's long experience of monetary stability and the special relationship between the schilling and the German mark, and through it with the other EMS currencies.

After accession there should not be any fundamental shift in the direction of Austria's economic policy. As regards the *acquis communautaire* which Austria will have to apply as a new member of the Community, much of this, as has been noted above, will already have been applied by virtue of the future EEA Agreement. Of the areas which remain, only agriculture and transit seem likely to give rise to a need for anything other than technical adjustments. For agriculture, substantial changes will be needed. As for transit, the position taken by the Austrian authorities raises an important question of principle which will have to be addressed in the accession negotiations. These few difficulties should, however, be resolved in the negotiations.

The Community will on the whole benefit from the accession of Austria, which would widen the circle of countries whose economic, monetary and budgetary performance will speed economic and monetary union on its way. The Community would also benefit from the experience of a country whose geographical position, history and the ties it has retained and forged place it right at the heart of the new Europe that is taking shape. On the basis of the economic considerations therefore, the Commission considers that the Community should accept Austria's application for accession.

From the political standpoint, the application must be situated in the general context of the future development of the Community and of Europe in general, as indicated in the foreword to this opinion.

In this connection, Austria's permanent neutrality creates problems for both the Community and Austria. The first issue which arises is that of the compatibility of permanent neutrality with the provisions of the existing Treaties. In addition, developments in the negotiations within the intergovernmental conference on political union would also require the Community to seek specific assurances from the Austrian authorities with regard to their legal capacity to undertake obligations entailed by the future common foreign and security policy.

Subject to possible further developments in the discussions under way in the intergovernmental conference, these problems should not however prove to be insurmountable in the context of the accession negotiations.

[...]

- (1) Except for certain sensitive products which were liberalized in 1984.
- (2) Austria's surface area is 84 000 km² and it has a population of 7.6 million (1989), which represents 2.3% of the population of the Community; foreign nationals make up 4% of the Austrian population. In 1990 per capita GDP was ECU 16 300, 13% above per capita GDP in the Community (ECU 14 400).
- (3) Since 1990 Community statistics have included the former GDR, which is therefore no longer included among the countries of Eastern Europe.
- (4) Österreichische Industrie AG.
- (5) Council Regulation (EEC) No 288/82 of 5 February 1982 (OJ L 35, 9.2.1982). Council Regulation (EEC) No 1765/82 of 30 June 1982 (OJ L 195, 5.7.1982), Regulation (EEC) No 1766/82 of 30 June 1982 (OJ L 195, 5.7.1982). The three Regulations were amended by Council Regulation (EEC) No 1243/86 of 28 April 1986 (OJ L 113, 30.4.1986). Council Regulation (EEC) No 3420/83 of 14 November 1983 (OJ L 346, 8.12.1983).
- (6) Council Regulation (EEC) No 2423/88 of 11 July 1988 (OJ L 209, 2.8.1988). Commission Decision 2424/88/ECSC of 29 July 1988 (OJ L 209, 2.8.1989).
- (7) Council Regulation (EEC) No 2603/69 of 20 December 1969 (OJ L 324, 27.12.1969) as amended by Council Regulation (EEC) No 1934/82 of 12 July 1982 (OJ L 211, 20.7.1982).
- (8) Council Regulation (EEC) No 2641/84 of 17 September 1984 (OJ L 252, 2.9.1984).
- (9) Council Regulation (EEC) No 3842/86 of 1 December 1986 (OJ L 357, 18.12.1986). Commission Regulation (EEC) No 3077/87 of 14 October 1987 adopting rules implementing Regulation (EEC) No 3842/86 (OJ L 291, 15.10.1987).
- (10) See Mr Mock's statement of 17 July this year.
- (11) If a Member State fails to apply a decision taken pursuant to Article 113 it not only infringes its Treaty obligations but impedes the free movement of goods.
- (12) Case 222/84 Marguerite Johnston (1986) ECR 1651 points 26, 27 and 60. Placing a strict construction on the second condition would confine this case to a Security Council operation under Chapter VII of the United Nations Charter.